

ORDINANCE NO. 421 N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES GRANTING TO SOUTHERN CALIFORNIA GAS COMPANY, A CORPORATION, THE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS FOR ANY AND ALL PURPOSES UNDER, ALONG, ACROSS OR UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES, AS THE SAME NOW OR MAY HEREAFTER EXIST, WITHIN SAID MUNICIPALITY

The City Council of the City of El Paso de Robles does ordain as follows:

SECTION ONE

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

- (a) The word "Grantee" shall mean the corporation to which the franchise contemplated in this ordinance is granted and its lawful successors or assigns;
- (b) The word "City" shall mean the City of El Paso de Robles, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated or reincorporated form;
- (c) The word "Streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said City;
- (d) The word "Engineer" shall mean the City Engineer of the City;
- (e) The word "Gas" shall mean natural or manufactured gas, or a mixture of natural and manufactured gas;
- (f) The phrase "Pipes and Appurtenances" shall mean pipe, pipeline, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, appurtenance and other property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in transmitting and distributing gas.
- (g) The phrase "lay and use" shall mean to lay, construct, erect, install, operate, maintain, use, repair, replace, or remove.

SECTION TWO

That the right, privilege and franchise subject to each and all of the terms and conditions contained in this ordinance, and pursuant to the provisions of Division 3, Chapter 2 of the Public Utilities Code of the State of California, known as the Franchise Act of 1937, be and the same is hereby granted to Southern California Gas Company, a corporation organized and existing under and by virtue of the laws of the State of California, herein referred to as the "Grantee", to lay and use pipes and appurtenances for transmitting and distributing gas for any and all purposes, under, along, across or upon the streets, of the City for an indeterminate term or period from and after the effective date hereof, that is to say, this franchise shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by its possessor, or until the State of California or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this franchise, and situate within the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or until this franchise shall be forfeited for non-compliance with its terms by the possessor thereof.

SECTION THREE

The Grantee shall pay to the City at the times hereinafter specified, in lawful money of the United States, a sum annually which shall be equivalent to two per cent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than one per cent (1%) of the gross annual receipts of the Grantee derived from the sale of gas within the limits of the City under this franchise; provided, however, in the event that the Legislature shall amend the Broughton Act (Public Utilities Code Section 6001-6017) or the Franchise Act of 1937 (Public Utilities Code Section 6201-6302) or other applicable acts, to provide for franchise payment greater than the percentage formula specified therein, the franchise fee agreed upon herein shall be automatically increased to the level expressed by the Legislature in amending such acts. If the Legislature shall amend such acts and no franchise payment formula is specified, or such acts are repealed altogether, then the City shall have the right to terminate this franchise within two (2) years after the effective date of the amendment or repeal of such acts. If the City does not terminate within said time period, this franchise shall continue in full force and effect and the Grantee shall make payment to the City pursuant to the franchise payment formula in effect prior to the amendment or repeal of such acts.

The Grantee of this franchise shall file with the Clerk of the City within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the grant of this franchise, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of the Grantee, its successors or assigns, during the preceding calendar year, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by said grantee to file such verified statement, or to pay said percentage, shall be grounds for the declaration of a forfeiture of this franchise and of all rights thereunder.

SECTION FOUR

This grant is made in lieu of all other franchises owned by the Grantee or by any successor of the Grantee to any rights under this franchise, for transmitting and distributing gas within the limits of the City, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all such franchises within the limits of this City, as such limits now or may hereafter exist, in lieu of which this franchise is granted.

SECTION FIVE

The franchise granted hereunder shall not become effective until written acceptance thereof shall have been filed by the Grantee thereof with the Clerk of the City. When so filed, such acceptance shall constitute a continuing agreement of the Grantee that if and when the City shall thereafter annex or consolidate with, additional territory, any and all franchise rights and privileges owned by the Grantee therein shall likewise be deemed to be abandoned within the limits of such territory.

SECTION SIX

The franchise granted hereunder shall not in any way or to any extent impair or affect the right of the City to acquire the property of the Grantee hereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge, either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee or any public utility. Nor shall this franchise ever be given any value

before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the City therefor at the time of the acquisition thereof.

SECTION SEVEN

The Grantee of this franchise shall

(a) construct, install and maintain all pipes and appurtenances in accordance with and in conformity with all of the ordinances, rules and regulations heretofore, or hereafter adopted by the legislative body of this City in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to State highways, subject to the provisions of general laws relating to the location and maintenance of such facilities;

(b) pay to the City, on demand, the cost of all repairs to public property made necessary by and operations of the Grantee under this franchise;

(c) indemnify and hold harmless the City and its officers from any and all liability for damages proximately resulting from any operations under this franchise; and be liable to the City for all damages proximately resulting from the failure of said Grantee well and faithfully to observe and perform each and every provision of this franchise and each and every provision of Division 3, Chapter 2 of the Public Utilities Code of the State of California;

(d) remove or relocate, without expense to the City, any facilities installed, used and maintained under this franchise if and when made necessary by any lawful change of grade, alignment or width of any public street, way, alley or place, including the construction of any subway or viaduct by the City; and

(e) file with the legislative body of the City within thirty (30) days after any sale, transfer, assignment or lease of this franchise, or any part thereof, or of any of the rights or privileges granted thereby written evidence of the same, certified thereto by the Grantee or its duly authorized officers.

SECTION EIGHT

The Engineer shall have power to give the Grantee such directions for the location of any pipes and appurtenances as may be reasonable necessary to avoid sewers, water pipes, conduits or other structures lawfully in or under the streets; and before the work of constructing any pipes and appurtenances is commenced, the Grantee shall file with said Engineer plans showing the location thereof, which shall be subject to the approval of said Engineer (such approval not to be unreasonably withheld); and all such construction shall be subject to the inspection of said Engineer and done to his reasonable satisfaction. All street coverings or openings of traps, vaults, and manholes shall at all times be kept flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways, between the curb and the property line.

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Where it is necessary to lay any underground pipes through, under or across any portion of a paved or macadamized street, the same, where practicable and economically reasonable shall be done by a tunnel or bore, so as not to disturb the foundation of such paved or macadamized street; and in the event that the same cannot be so done, such work shall be done under a permit to be granted by the Engineer upon application therefor.

SECTION NINE

If any portion of any street shall be damaged by reason of defects in any of the pipes and appurtenances maintained or constructed under this grant, or by reason of any other cause arising from the operation or existence of any pipes and appurtenances constructed or maintained under this grant, said Grantee shall, at its own cost and expense, immediately repair any such damage and restore such street, or portion of street, to as good a condition as existed before such defect or other cause of damage occurred, such work to be done under the direction of the Engineer, and to his reasonable satisfaction.

SECTION TEN

(a) If the Grantee of this franchise shall fail, neglect or refuse to comply with any of the provisions or conditions hereof, and shall not, within ten (10) days after written demand for compliance, begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then the City, by its legislative body, may declare this franchise forfeited.

SECTION ELEVEN

The Grantee of this franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this franchise; such payment to be made within thirty (30) days after the City shall furnish such Grantee with a written statement of such expenses.

SECTION TWELVE

Not later than thirty (30) days after the publication of this ordinance, the Grantee shall file with the City Clerk a written acceptance of the franchise hereby granted, and an agreement to comply with the terms and conditions hereof.

SECTION THIRTEEN

The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published once in the Paso Robles Daily Press, a newspaper of general circulation in the City of El Paso de Robles.

Barney Schwartz
MAYOR

ATTEST:

Donald B. Steyer
CITY CLERK

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of El Paso de Robles, on the 17th day of April, 19 79, by the following votes:

AYES: Councilman Hanson, Hurst, Stemper & Schwartz

NOES: Councilman None

ABSENT: Councilman Minshull

Donald B. Steyer
CITY CLERK

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